

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**BNSF RAILWAY COMPANY**, a Delaware  
corporation,

CV No.: 3:08-CV-415-BR

**JUDGMENT**

Plaintiff-Counterdefendant,

vs.

**ALBANY & EASTERN RAILROAD  
COMPANY**, an Oregon corporation, and  
**MICHAEL R. ROOT**, an individual,

Defendants-Counterclaimants.

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This action came on for trial before an eight-person jury, The Honorable Anna J. Brown, District Judge, presiding on May 16, 17, 18 and 19, 2011. Plaintiff BNSF Railway Company was represented by Timothy R. Thornton and David P. Morrison. Defendants Albany & Eastern Railroad Company and Michael R. Root were represented by William N. Mehlhaf and Stacy R. Owen.

Prior to trial, the Court, on its own motion, bifurcated plaintiff's Second Claim for Misrepresentation/Piercing the Corporate Veil against defendant Michael R. Root for a separate trial.

Each party made opening statements, called witnesses and introduced evidence in support of their respective positions, rested and made closing arguments.

The jury was instructed and provided with a special verdict form. To the question "[D]id Plaintiff BNSF prove by a preponderance of the evidence that Defendant AERC breached paragraph 2(c) of the [April 3, 1998] Agreement [for Sale of Certain Assets, Rights and Obligations] by failing to compensate BNSF for each loaded rail car AERC interchanged with Union Pacific at Albany, Oregon?" the jury unanimously answered "No." The jury's special verdict was entered on May 19, 2011.

NOW, THEREFORE, JUDGMENT IS HEREBY ENTERED in favor of defendant Albany & Eastern Railway Company and against plaintiff upon plaintiff's First Claim for Breach of Contract, which is dismissed with prejudice on its merits.

JUDGMENT IS FURTHER ENTERED in favor of defendant Michael R. Root and against plaintiff upon plaintiff's Second Claim for Misrepresentation/Piercing the Corporate Veil, which is dismissed with prejudice, on the basis that it is rendered moot following the jury's verdict on plaintiff's First Claim.

DATED this 2nd day of June, 2011.

  
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Anna J. Brown  
United States District Court Judge

Submitted by:

MARKOWITZ, HERBOLD, GLADE &  
MEHLHAF, PC

By: */s/ William N. Mehlhaf*

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William N. Mehlhaf, OSB #752555

Stacy R. Owen, OSB #074826

(503) 295-3085

Of Attorneys for Defendants

ROOTBU\255752